IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1948.

No. 348

CURTIS D. MacDOUGALL, et al.,
Plaintiffs-Appellants,

vs.

DWIGHT H. GREEN, Individually and as Governor of the State of Illinois, et al.,
Defendants-Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

APPELLANTS' BRIEF AND ARGUMENT.

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ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

APPELLANTS' BRIEF AND ARGUMENT.

THE DECISION BELOW.

This appeal is from an order, dated October 11, 1948, of a three-judge court denying the Appellants' motion for an interlocutory injunction and dismissing the complaint in a civil suit assailing as unconstitutional an Illinois statute. There is no official report of the opinion. The Findings of Fact and Conclusions of Law entered by the court are appended to this Brief as Appendix "A".

JURISDICTION OF THIS COURT ON DIRECT APPEAL.

The jurisdiction of this Court on direct appeal rests on Section 1253 of the new Judicial Code (28 U. S. C. Sec. 1253), effective September 1, 1948, which provides:

> "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges."

The Appellants sought in their complaint and motion for an interlocutory injunction to restrain the enforcement and operation of a state statute by restraining the action of Illinois state officers in the application of a ruling made by the Illinois State Officers Electoral Board acting under such statute, on the ground that the statute involved was unconstitutional. A suit of this type must be heard and determined by a three-judge district court pursuant to Sections 2281 and 2284 of the new Judicial Code. The court denied the interlocutory motion and dismissed the complaint.

STATEMENT OF THE CASE.

State of the Record.

The order of the district court was entered, after notice and hearing, on the Appellants' sworn complaint as amended and motion for an interlocutory injunction. Defendants submitted no affidavits in opposition to this motion and raised no questions of fact in connection therewith. No answers were filed by any of the defendants with the exception of the Board of Election Commissioners of the City of Danville and the individual Commissioners. This answer, filed four days after the hearing in district court, admitted the allegations of fact in the Appellants' complaint and merely denied the conclusions of law.

The district court denied the motion for an interlocutory injunction and, on its own motion, dismissed the complaint. On this state of the record the allegations of the complaint must be taken as true, and the district court so stated at the opening of the hearing on the motion for an interlocutory injunction.

The Parties.

The Appellant Curtis D. MacDougall is a citizen and resident of the State of Illinois and Progressive Party candidate for the office of United States Senator from the State of Illinois.

The Appellants Alice L. Boyd, Boris Brail, Grace Clark Brown, Charles H. Coyle, Charles Fischer, Florence Gowgeil, Alfred W. Israelstam, Joseph Kalika, Mandall Kaplan, Eugene A. Kazmark, Faye Langerman, Iris Lewin, Ralph K. Meister, Frank Opal, Herbert Pinzke, Pauline K. Reed, Samuel Rosenberg, John C. Ross, Isadore H. Shapiro, Alice L. Smith, Pasko Soso, Hans A. Spading, David Spitzner,

Boris Steinberg, Donald C. Teigland, Bliss W. Tuttle, Frank Vettorel, and Nelson M. Willis are citizens and residents of the State of Illinois and Progressive Party candidates for the offices of Electors of President and Vice President of the United States from the State of Illinois.

The Appellants Oakes, Diehl, Reed, McDonough, Nebgen, Hesson, Blaine, Cassill, and Wakefield are citizens and residents of the State of Illinois and Progressive Party candidates for state offices in the State of Illinois.

The Appellant Progressive Party is an organization of qualified voters of the State of Illinois desirous of forming a new state-wide political party to be known as The Progressive Party and of placing the names of Progressive Party candidates on the official ballots to be used at the November 2, 1948 general election.

The Appellants Garfield, Andich, and Holtzman are citizens and registered voters of the State of Illinois.

The Appellees Green, Lueder, and Barrett are state officers of the State of Illinois whose duty it is under Article 10 of the Illinois Election Code to certify to the County Clerks the names of candidates entitled to appear on the official ballots, but who, where objections to nominating petitions are filed, are required by statute to follow and abide by the ruling of the State Officers Electoral Board; the Appellees County Clerks, Boards of Election Commissioners, and members of Boards of Election Commissioners are charged with specific duties under the Illinois Election Code in connection with the preparation of ballots and the certification of the names of candidates entitled to appear on said ballots.

Brief Statement of the Constitutional Issues.

This appeal presents to this Court important constitutional questions involving the right of qualified voters of the State of Illinois to form a new political party and nominate candidates for Electors of President and Vice-President of the United States, United States Senator, and state officers. Under the Illinois Election Code, a petition to form a new state-wide political party and to nominate candidates of such new party must be signed by at least 25,000 qualified voters, including at least 200 from each of at least 50 counties. **The Appellants contend that the requirement of at least 200 signatures from each of at least 50 counties, added by amendment in 1935, violates the privileges and immunities, equal protection, and due process clauses of the Fourteenth Amendment, the Seventeenth Amendment, and Section 18 of Article II of the Illinois Constitution which provides that "All elections shall be free and equal."**

The Progressive Party Nominating Petition and the Proceedings before the Illinois State Officers Electoral Board.

On August 16, 1948 there was filed in the office of the Secretary of State of the State of Illinois a "Declaration of Intention to Form a New State-wide Political Party and a Petition to Nominate Candidates of Said Party" under the party name "Progressive Party", in accordance with the provisions of Article 10 of the Illinois Election Code. *Ill. Rev. Stat., 1947, Chap. 46, Art. 10.* The petition bore more than 75,000 signed names and nominated Progressive Party candidates for the offices of Electors of President and Vice-

President of the United States, United States Senator, and state-wide offices. (Complaint, pars. 14, 15, 16.)*

Objections to the sufficiency of the petition were filed by opponents of the Progressive Party. (Complaint, par. 17.) The principal contention of the objectors was that the Progressive Party petition did not contain at least 200 valid signatures from each of at least 50 counties. Other insufficiencies were alleged, but at the hearing before the State Officers Electoral Board this was the only objection pressed. In other words, **the objectors relied on the 1935 amendment, which Appellants assail as unconstitutional in this case.** (Complaint, pars. 26, 27.)

On August 26, 1948 the State Officers Electoral Board, provided for by Article 10 of the Illinois Election Code, met to determine the sufficiency of the nominating petition. (Complaint, par. 24.) The Board consisted of Arthur C. Lueder, Auditor of Public Accounts of the State of Illinois, Mr. Justice Wilson of the Illinois Supreme Court in place of the Attorney General, who was disqualified because he is a candidate for reelection, and Mr. Justice Gunn of the Illinois Supreme Court in place of the Secretary of State, who was adjudged by a declaratory judgment of the Circuit Court of Sangamon County to be disqualified because he is a candidate for reelection. (Complaint, pars. 22, 23, 24.)

The Board heard evidence pertaining to the objection that there were not at least 200 valid signatures from each of at least 50 counties in the State of Illinois. The issue presented for decision by the Board was whether the Progressive Party nominating petition complied with the provisions of the 1935 amendment to Section 2 of Article

* Since this appeal is being heard on the typewritten short record, not now available to Appellants, references are to the relevant documents themselves.

10 of the Illinois Election Code. (Complaint, pars. 25, 26, 27.)

The objectors conceded before the State Officers Electoral Board that the Progressive Party nominating petition contained over 25,000 signatures of qualified Illinois voters. (Complaint, par. 26.) They also conceded, at the close of the proceedings, that the petition contained at least 200 valid signatures from 41 counties. In fact on the figures they themselves presented to the Board they conceded that the petition was short only a matter of between 83 and 110 signatures distributed over 9 counties. (Complaint, par. 48 and Exhibits E and F.)

The Board found as a matter of fact that the Progressive Party nominating petition did not bear at least 200 signatures of qualified voters from each of 50 counties. (Complaint, par. 28.) It therefore entered an order on August 31, 1948 (Complaint, Exhibit D), the material portions of which follow:

> 3. After the examination made of the petition filed by the said Progressive Party, and after hearing all the evidence on behalf of the objectors and on behalf of the said Progressive Party, this Electoral Board makes the following finding: **That the nominating petition filed on behalf of the said candidates of the Progressive Party does not include the signatures of 200 qualified voters from each of at least 50 counties within this state as required by statute for the nomination of said candidates for such public office, and is therefore insufficient in law as a nominating petition.**
>
> It is, therefore, the decision of this Board that the purported petition of said candidates of the Progressive Party is not sufficient in law to entitled the said candidates' names to appear on the ballot, and the objections thereto are therefore sustained. (Emphasis added.)

It is clear that the only reason the candidates of the Progressive Party were ruled off the ballot was the in-

sufficiency of the nominating petition in one regard, and one regard only. The Board found that it lacked at least 200 valid signatures from each of at least 50 counties. **The Board sustained no other objection and made no other finding as to the petition's insufficiency.** (Complaint, par. 28.)

If this order is to stand, the Progressive Party's candidates will be barred from the ballot and Illinois voters who wish to vote for those candidates will be disfranchised from so voting at the November 2, 1948 general election.*

Motions in the Illinois Supreme Court.

Following this ruling the Appellants sought by two separate motions, on September 13, 1948 and September 23, 1948, to obtain leave to file petitions for mandamus in the Supreme Court of the State of Illinois in order to adjudicate the following two questions (Complaint, par. 29; Amendment to Complaint, par. 50a.):

(1) Does the requirement that at least 200 signatures be obtained from each of at least 50 counties so far deny equality in voting power and therefore in electoral potential as to violate one, some, or all of the Federal and Illinois constitutional provisions guaranteeing due process of law, equal protection of the law, the privileges and immunities of citizens of the United States, and free and equal elections?

(2) Does the provision of Section 4 of Article 10 of the Illinois Election Code which provides "that any person who has already voted at a primary election held to nom-

* The candidates for President and Vice-President of the Socialist, Socialist-Labor and Prohibition parties will appear on the ballot in Illinois. These parties, like the Progressive Party, filed nominating petitions under Article 10 of the Illinois Election Code. Unlike the Progressive Party, however, these parties were not faced with objections as to the sufficiency of their petitions. In the absence of objections, their candidates were automatically certified for placement on the ballot.

inate a candidate or candidates for any office of offices, to be voted upon at any certain election, shall not be qualified to sign a petition of nomination for a candidate or candidates for the same offices, to be voted upon at the same certain election," disqualify a person who voted in the April 13, 1948 primary election from signing a Progressive Party nominating petition insofar as that petition seeks to nominate candidates for the offices of Electors of President and Vice-President of the United States, no candidates for such offices having been nominated at the April 13, 1948 primary election?

Under the Illinois Constitution the Illinois Supreme Court has original jurisdiction in mandamus. *Ill. Const. Art. VI, sec. 2.* In view of the shortness of the time prior to the election, the Appellants' efforts to get the Illinois Supreme Court to exercise that jurisdiction represented their sole opportunity for redress in the Illinois state courts.

The Illinois Supreme Court on September 14, 1948 and September 24, 1948 denied the motions for leave to file the petitions for mandamus, giving no grounds for its actions. (Complaint, par. 30; Amendment to Complaint, par. 50b.)

The Suit in the District Court.

The Appellants did not attempt to review the rulings of the Illinois Supreme Court in view of the holding of this Court in *White* v. *Ragen*, 324 U. S. 760 (1945). On September 24, 1948, therefore, they filed a complaint for declaratory and injunctive relief in the District Court of the United States for the Northern District of Illinois, Eastern Division. The complaint raised both the questions previously sought to be presented separately by motions in the Illinois Supreme Court, and prayed an interlocutory injunction in effect requiring the defendant election officials

to place the names of the Progressive Party candidates on the ballots for use throughout the State of Illinois at the general election to be held on November 2, 1948. The cause was assigned to a three-judge court consisting of Circuit Judge Kerner and District Judges Igoe and Sullivan.

A hearing on the plaintiffs' motion for an interlocutory injunction was had on October 4, 1948. Briefs were filed by the plaintiffs and by some of the defendants and also by the American Civil Liberties Union as *amicus curiae*.

On October 11, 1948 the court rendered its decision denying the motion for an interlocutory injunction and dismissing the complaint. The court disposed of the merits by holding that the 1935 amendment to Section 2 of Article 10 of the Illinois Election Code did not violate either the United States or Illinois Constitutions. Application for appeal to this Court was presented to the district court and granted on October 11, 1948.

SPECIFICATION OF ERRORS.

The District Court erred in the following respects:

1. In denying Appellants' motion for an interlocutory injunction, and in failing to grant that motion.

2. In dismissing the complaint.

3. In holding that the 1935 amendment to Section 2 of Article 10 of the Illinois Election Code does not violate any provision of the United States Constitution or Section 18 of Article II of the Constitution of Illinois.

4. In holding that the court was without jurisdiction to inquire into the decision of the Illinois State Officers Electoral Board of August 31, 1948, and in failing to hold that the relief prayed for may be granted notwithstanding that decision.

SUMMARY OF APPELLANTS' CONTENTIONS.

Prior to 1935, the statute authorizing the formation of new state-wide political parties in Illinois required, *inter alia*, that at least 25,000 electors sign a document authorized and prescribed by the statute and usually called a Declaration of Intention to Form a New Political Party and a Petition to Nominate Candidates of Said Party. *Smith-Hurd Rev. Stat., 1933, Chap. 46, par. 291.* In 1935, the statute was amended: the requirement of at least 25,000 signatures was retained, but there was added to it the following proviso:

> "Provided, that included in the aggregate total of twenty-five thousand (25,000) signatures are the signatures of two hundred (200) qualified voters from each of at least fifty (50) counties."

The original text of this amendment will be found in the Illinois Session Laws for 1935 at page 789; it is now part of Section 2 of Article 10 of the Illinois Election Code. *Ill. Rev. Stat., 1947, Chap. 46, sec. 10-2.* Hereafter it will be referred to as the 1935 amendment to Section 2 of Article 10 of the Illinois Election Code.*

This section provides the only means whereby qualified voters in Illinois can form a new political party and nominate candidates of such new party for Electors of President and Vice-President of the United States, United States Senator, and state-wide offices. An identical requirement is contained in Section 3 of Article 10 of the Illinois Election Code with regard to the nomination of independent candidates for these offices. Thus new-party or independent nominations for these offices can be accomplished only by

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* This amendment has previously been before this Court. In a case very similar to this one, the appeal was dismissed after election on the ground of mootness. *Blackman* v. *Stone*, 300 U. S. 641 (1937). For further proceedings in the same matter see *Blackman* v. *Stone*, 101 F. 2d 500 (C. C. A. 7th, 1939).

means of a nominating petition, under Section 2 or 3 of Article 10 of the Illinois Election Code, containing a minimum of 25,000 signatures of qualified voters, including at least 200 from each of at least 50 counties. Voters who do not wish to participate in either the Democratic or Republican primaries have no opportunity to nominate candidates apart from these provisions of Article 10. The Illinois Election Code gives them this one method of nomination and no other.

In view of the enormous variation in the respective populations of Illinois' 102 counties, more than half of the state's electorate living in Cook County alone as against many counties with less than 10,000 electors, the Appellants submit that **the requirement that at least 200 signatures be obtained from each of at least 50 counties so far denies equality in voting power and therefore in electoral potential as to violate one, some, or all of the Federal and Illinois constitutional provisions guaranteeing due process of law, equal protection of the law, the privileges and immunities of citizens of the United States, and free and equal elections.**

Since voters of the established parties under the Primary Law *Article 7 of the Illinois Election Code* need not meet any requirement as to geographical distribution of the vote in primary elections in order to nominate candidates for Electors of President and Vice-President of the United States, United States Senator, and state offices, and since established parties need obtain only 5 per cent of the total vote cast throughout the state in order to remain legally established and to participate in subsequent primary and general elections, the Appellants submit that **the requirement that at least 200 signatures be obtained from each of at least 50 counties for a new-party or independent nominating petition discriminates against voters who may wish to form a new party or to nominate independent candidates, by**

imposing an extremely difficult requirement as to geographical distribution, and in favor of voters of established parties, as to whom no such geographical distribution is imposed.

Inasmuch as the Progressive Party nominating petition named a candidate for the office of United States Senator to be voted on at the coming general election, the Appellants submit further that **the requirement that such a petition contain at least 200 signatures from each of at least 50 counties violates Amendment XVII to the United States Constitution which provides that United States Senators from each state shall be "elected by the people thereof."**

It is important to note that inasmuch as the only provision assailed as unconstitutional, that is, the provision requiring that at least 200 signatures be obtained from each of at least 50 counties, was added to the statute by way of amendment, the deletion of that amendment as unconstitutional would leave intact the legislation in its original form. The invalidation of the amendment would not nullify the whole statute. *People* v. *Alterie,* 356 Ill. 307 (1934).

If the 1935 amendment to Section 2 of Article 10 of the Illinois Election Code is invalid, the Appellants are entitled to have the names of all their candidates appear on the ballots for the November 2, 1948 election, inasmuch as it is conceded that the petition of the Progressive Party meets all the requirements of Section 2 of Article 10, as in force prior to the 1935 amendment.

As an alternative to these constitutional questions, this appeal presents a problem of the proper construction of a portion of Section 4 of Article 10 of the Illinois Election Code. *Ill. Rev. Stat., 1947, Chap. 46, sec. 10-4.* The statutory language in question reads as follows:

> "Provided further, that any person who has already voted at a primary election held to nominate a candi-

date or candidates for any office or offices, to be voted upon at any certain election, shall not be qualified to sign a petition of nomination for a candidate or candidates for the same offices, to be voted upon at the same certain election."

Candidates for the offices of Electors of President and Vice-President of the United States were not nominated at the April 13, 1948 primary election. Under Article 21 of the Illinois Election Code they are nominated by the legally established political parties by convention. **It is therefore the contention of the Appellants that voters who participated in the April 13, 1948 primary election were not thereby disqualified from signing a petition nominating candidates for the offices of Electors of President and Vice-President of the United States.** The Appellants alleged, and it was not denied, that **were it not for the signatures disqualified because of the fact that the signers voted in the April 13, 1948 primary election, there would have been at least 200 valid signatures from each of 50 counties,** with the result that the Progressive Party nominating petition would have been valid to nominate candidates for the offices of Electors of President and Vice-President of the United States.

On this view of the matter the Appellants are entitled to have the names of the Progressive Party candidates for President and Vice-President of the United States appear on the official ballots for use in the State of Illinois at the November 2, 1948 election.

ARGUMENT.

I.

The District Court properly had jurisdiction of this case and had the authority to grant the declaratory and injunctive relief prayed for in the complaint.

1. The District Court had original jurisdiction under Section 1343 of the new Judicial Code.

Section 1343 provides:

> "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

This provision is the present and slightly altered form of Section 24 (14) of the Judicial Code, *28 U. S. C. sec. 41 (14)*, which has its origin in the Civil Rights Act of April 9, 1866, *14 Stat. 27*. Under this provision allegation and proof of the requisite jurisdictional amount are not necessary. *Hague* v. *C. I. O.*, 307 U. S. 496, 506-13 (1939).

The Appellants' cause of action arises under the Constitution of the United States, particularly Section 4 of Article I, Section 1 of Article II, Amendment XVII, and Amendment XIV. Suits such as the one brought here are authorized by the Civil Rights Act of 1871, *8 U. S. C. sec. 43*.

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

The Appellees here are acting under color of the 1935 amendment to Section 2 of Article 10 of the Illinois Election Code and the decision of the State Officers Electoral Board based upon it, in refusing to certify or print or cause to have printed the names of the candidates of the Progressive Party on the official ballots. The 1935 amendment and the action of the Appellees thereunder deprives Appellants of rights secured by the United States Constitution in the nomination of candidates to public office, i.e., the rights to equal protection of the law, due process of law, and the privileges and immunities guaranteed by Amendment XIV, and the right of the people to elect Senators guaranteed by Amendment XVII.

2. The complaint stated a cause of action of a civil nature under the Declaratory Judgment Act.

Section 2201 of the new Judicial Code, *28 U. S. C. sec. 2201*, provides as follows:

> "In cases of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

The Appellants asked the district court, pursuant to the above provision, to hold and declare "that the provision of Section 2 of Article 10 of the Illinois Election Code added by amendment in 1935 requiring for a valid nominating petition at least two hundred (200) signatures of qualified voters from each of at least fifty (50) counties is unconstitutional in violation of both the United States and Illinois Constitutions. * * *" (Complaint, page 14.)

The Appellants also asked for further relief as authorized by Section 2202 of the new Judicial Code:

> "Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."

The further relief requested was an order enjoining the various defendants from continuing to abstain from taking the steps required under the Illinois Election Code to place the names of the Progressive Party candidates on the official ballots for use throughout the State of Illinois at the general election to be held on November 2, 1948.

The complaint presented an actual controversy between Appellants and Appellees appropriate for determination under the declaratory judgment provisions of the Judicial Code. The Appellees are carrying out their duties, and intend to continue to do so, under a provision of the Illinois Election Code which the Appellants contend is unconstitutional. In the performance of these duties, Appellees are printing the ballots and making other preparations for the November 2, 1948 election without giving recognition to the rights of Progressive Party candidates to appear on the ballots. The Appellants contend that since this action deprives them of constitutional rights it should be restrained. Cf. *Colegrove* v. *Green*, 328 U. S. 549 (1946).

Declaratory judgment is an appropriate remedy for the protection of political rights. Professor Borchard, in his treatise *Declaratory Judgments*, at pages 868 *et seq.*, shows that declaratory judgment has been used in many instances to protect rights pertaining to elections, including the propriety or regularity of an election, the legality of its conduct, the statutory qualification or eligibility of the nominee, the term for which an officer has been elected, the duty to hold a new election, the right to vote, and the computation of the ballots.

See *Ekern* v. *Dammann*, 215 Wis. 394, 254 N. W. 759 (1934).

3. The Complaint was a proper one for a hearing before a three-judge court.

Wherever an application is made for an interlocutory or permanent injunction "restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes," on the ground that the statute involved is unconstitutional, the application must be heard and determined by a three-judge district court. *28 U. S. C. sec. 2281-84.*

The Appellants made such an application, as the complaint clearly shows. They therefore asked that the cause be assigned to a three-judge court and subsequently filed a motion to that effect. The motion was properly granted.

4. Appellants have exhausted all state remedies that were in any real sense available to them.

The Appellants do not concede that prior to initiating this suit to obtain redress for deprivation of a right protected by the United States Constitution they were obliged

to seek a remedy in the state courts. In fact this Court has held, in circumstances similar to those presented here, that a preliminary expedition to the state courts is not required. *Lane* v. *Wilson*, 307 U. S. 268, 274-75 (1939).

Nevertheless, as stated above, the Appellants did seek, by motions for leave to file petitions for mandamus in the Supreme Court of Illinois, under that court's original jurisdiction in mandamus, to raise the very issues subsequently presented to the district court. These motions were denied, without opinion or assignment of reasons for the denials. Clearly the Plaintiffs are unable to find relief in the state courts. In such circumstances the doctrine of *Railroad Commission* v. *Pullman Co.*, 312 U. S. 496 (1941), and *Chicago* v. *Fieldcrest Dairies*, 316 U. S. 168 (1942), has no applicability.

5. Where a federal court has jurisdiction by reason of the existence of a substantial federal question, it has jurisdiction to decide all the questions in the case.

In the leading case, *Siler* v. *Louisville & Nashville R. R. Co.*, 213 U. S. 175 (1909), a railroad company attacked an order of the state railway commission on the ground that the state statute involved was unconstitutional. The court declined to pass on the federal question presented, that of the statute's unconstitutionality, resting its decision on a construction of the state statute. This Court affirmed, saying, at page 191:

> "The federal questions, as to the invalidity of the state statute because, as alleged, it was in violation of the Federal Constitution, gave the Circuit Court jurisdiction, and, having properly obtained it, that court had the right to decide all the questions in the case, even though it decided the Federal questions adversely to the party raising them, and even if it omitted to decide them at all, but decided the case on local or state questions only."

This doctrine has recently been upheld. *Hurn* v. *Oursler*, 289 U. S. 238, 246 (1933); *Hillsborough* v. *Cromwell*, 326 U. S. 620, 629 (1946).

The rule has specifically been held applicable to proceedings involving applications for injunctions before three-judge courts. *Louisville & Nashville R. R. Co.* v. *Garrett*, 231 U. S. 298 (1913). Referring to the three-judge court provision, this Court said, at page 304:

> "This statute applies to cases in which the preliminary injunction is sought in order to restrain the enforcement of a state enactment upon the ground of its 'unconstitutionality.' The reference, undoubtedly, is to an asserted conflict with the Federal Constitution; and the question of unconstitutionality in this sense must be a substantial one. But, where such a question is presented, the application is within the provision, and this being so, it cannot be supposed that it was the intention of Congress to compel the exclusion of other grounds and thus to require a separate motion for preliminary injunction, and a separate hearing and appeal, with respect to the local questions which are involved in the case and would properly be the subject of consideration in determining the propriety of granting an injunction pending suit. The local questions arising under the state constitution and statutes were therefore properly before the Circuit Court and the appeal brings them here."

From these authorities it is clear that the district court had jurisdiction to decide **all the questions** presented by the complaint. If necessary for the disposition of the case, it could have determined the proper construction of the portion of Section 4 of Article 10 of the Illinois Election Code brought into issue, even though that question is not a constitutional one and ordinarily would not be heard by a three-judge court.

It is likewise clear that the district court could have determined whether or not that part of Section 2 of Article 10 of the Illinois Election Code requiring, for a valid nomi-

nating petition, at least 200 signatures from each of at least 50 counties, is in violation of Section 18 of Article II of the Illinois Constitution.

In *Glenn* v. *Field Packing Co.*, 290 U. S. 177 (1933), this Court affirmed per curiam a decision of a three-judge district court holding a state statute invalid under the state constitution; the district court did not decide the federal question. Cf. *Sterling* v. *Constantin*, 287 U. S. 378, 393-94 (1932).

Concerning the jurisdiction of a federal court to adjudge a state statute in conflict with the state constitution in advance of any determination by the state courts, see *Louisville & Nashville R. R. Co.* v. *Garrett*, 231 U. S. 298, 305 (1913); *Michigan Central R. R.* v. *Powers*, 201 U. S. 245, 291 (1906); *Pelton* v. *National Bank*, 101 U. S. 143, 144 (1880); *Union Pacific R. R. Co.* v. *Alexander*, 113 Fed. 347 (C. C. Colo., 1901).

II.

The provision of Section 2 of Article 10 of the Election Code added by amendment in 1935 requiring 200 valid signatures from each of 50 counties constitutes an arbitrary, unreasonable, and discriminatory restriction on the right of qualified voters of the State of Illinois to nominate and vote for candidates of their own choice.

This provision was added by amendment in 1935. *Laws, 1935, p. 789.* Prior to that amendment the requirement as to signatures to nominate new-party candidates for presidential electors, United States Senator, and state-wide offices by petition under Article 10 was in terms of the total only: 25,000 signatures of qualified voters in the state. The effect of the 1935 amendment, therefore, was to add a further requirement to the already existing requirement.

And the new 1935 requirement unquestionably made compliance vastly more difficult, for no longer would any 25,000 valid signatures suffice. The 1935 amendment made it mandatory that that total meet a further and very exacting requirement as to geographical distribution. At least 200 valid signatures must come from each of 50 counties. The requirements for nominating independent candidates were similarly amended by the same act. **In other words, by reason of the operation of the 1935 amendment, 25,000 valid signatures or 4,000,000 valid signatures would not suffice to nominate new-party or independent candidates unless their geographical distribution was proper.**

Fully to appreciate the effect of this 1935 amendment requires a consideration of several facts as to the distribution of population in Illinois:

There are 102 counties in the State of Illinois.

One county, Cook County, contains over 51 per cent of the total population and over 52 per cent of the registered voters of the entire state. (Complaint, par. 33.)

The five most populous counties, Cook, St. Clair, Peoria, Madison, and Kane, **contain approximately 59 per cent of the total population of the entire state and approximately 59 per cent of the registered voters of the entire state.** (Complaint, par. 34.)

The forty-nine most populous counties, Cook, St. Clair, Peoria, Madison, Kane, Winnebago, Lake, Sangamon, Will, Rock Island, DuPage, LaSalle, Vermilion, Macon, McLean, Champaign, Adams, Kankakee, Tazewell, Franklin, Knox, Williamson, Marion, Macoupin, Fulton, Henry, Whiteside, Stephenson, Livingston, Christian, Coles, Saline, Jackson, Bureau, McHenry, Morgan, Lee, Montgomery, DeKalb, Jefferson, Randolph, Iroquois, Ogle, Lo[illegible]n, Hancock, Fayette, McDonough, Shelby, and Alexander, **contain approximately**

89 per cent of the total population of the entire state and approximately 87 per cent of the registered voters of the entire state. (Complaint, par. 35.)

The fifty-three remaining counties contain approximately 11 per cent of the total population of the entire state and approximately 13 per cent of its registered voters.

The forty-one counties in which at least two hundred qualified voters signed the Progressive Party petition, on the facts as conceded by the objectors themselves, contain over 80 per cent of the total population of the entire state and approximately 80 per cent of the registered voters of the entire state.*

The 1935 amendment thus effectively prevents the more than 52 per cent of the state's registered voters who reside in Cook County from forming a new political party in the state and from nominating candidates for presidential electors, United States Senator, and state-wide offices under Article 10 of the Illinois election code.

The 1935 amendment likewise prevents the 59 per cent of the state's registered voters who reside in Cook, St. Clair, Peoria, Madison, and Kane Counties from forming a new political party in the state and from nominating candidates for presidential electors, United States Senator, and state-wide offices under Article 10 of the Illinois election code.

The 1935 amendment even prevents the 87 per cent of the state's registered voters who reside in the forty-nine most populous counties of the state from forming a new political party in the state and from nominating candidates for presidential electors, United States Senator, and state-wide offices under Article 10 of the Illinois Election Code. Yet

* See Appendix B for detailed population and registration figures by counties.

25,000 of the remaining 13 per cent of the registered voters properly distributed among the fifty-three least populous counties could form a new party and nominate candidates for these offices.

Clearly the ultimate consequence of this 1935 amendment is to make the influence of a qualified voter in a populous county less than the influence of a qualified voter in a smaller county. For additional signatures over and above the required 200 in a large county will not make up for a lack of the 200 in any other county.

As a matter of fact, before the State Officers Electoral Board in this very case, it was conceded by the objectors that the Progressive Party petition contained sufficient signatures in 41 counties. Only 9 counties were short. **And in the nine counties which were closest to meeting the required total of 200 signatures, the objectors conceded an average of 188 to 191 *-valid signatures.** (Complaint, Exhibits E and F.) **In other words, the petition of the Progressive Party was short by a total of not over 110 and perhaps only 83 signatures distributed over 9 counties. The petition contained many thousands of valid signatures in excess of the basic requirement of 25,000. But these extra signatures, since they did not come from the counties where they were needed, could not be used to make up that tiny deficit of between 83 and 110 signatures.**

Thus, as the 1935 amendment is operating in this case, it predicates the influence of a voter's signature on his geographical residence. The democratic maxim "One Man, One Vote" does not apply under Section 2 of Article 10 to forming a new party or nomating candidates by petition. **The vote (here the signature) of a voter counts only if he comes from the right county.**

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* Depending on how certain errors noted and corrections made at the proceeding are calculated.

It is important to note that no similar geographical requirement is to be found in any of the other provisions of The Illinois Election Code.

Once a new party succeeds by petition in getting on the ballot, it needs only 5 per cent of the total vote cast throughout the state in order to become a legally established political party. That 5 per cent of the vote can come from all 102 counties or from only one county, **and every vote counts equally with every other vote, regardless of where it comes from.** *(Section 2, Article 10, Illinois Election Code.)*

Candidates for state-wide office are elected by popular vote on a state-wide basis, and in determining the results of an election for state-wide office, **every vote counts equally with every other vote, regardless of where it comes from.**

Established political parties, in nominating their candidates at primary elections, are faced with no geographical requirement as to the distribution of primary votes by county. Republican or Democratic candidates for state-wide offices are nominated at primary elections by the votes of all the Republican or Democratic voters throughout the state, **and every vote counts equally with every other vote, regardless of where it comes from.** *(Article 7, Illinois Election Code.)*

Voters in any particular Congressional district, county, Senatorial district, city, township, or other political district for which officers or representatives are elected may form a new party in such political district and nominate candidates by petition under Article 10 of the Illinois Election Code without meeting any distribution requirement as to the signatures on their petitions. They must obtain a minimum number of valid signatures equal to 5 per cent of the vote cast in the last general election in the political district in question, **but those signatures can come from all**

parts of the district or from one corner of it. And this is as things should be, since any candidate so nominated can be elected by a majority (or upon occasion, by a plurality) of the voters of his district, with every vote counting equally with every other vote, regardless of where in the district it comes from. *(Section 2, Article 10, Illinois Election Code.)*

And although it is unlikely to occur, it is entirely possible that the voters of Cook County, since they outnumber the voters of all the rest of the state put together, could elect a United States Senator and other state-wide officers in the face of the united opposition of the voters of the other 101 counties. So long as there is one state of Illinois which includes Cook County along with the other counties of the state, this would be a perfectly proper result.

Although the majority could elect, it could not nominate! This is the anamolous result of the 1935 amendment.

It is apparent that the legislature, by the 1935 amendment, discriminated against voters who might wish to form a new political party and to nominate candidates for presidential electors, United States Senator, and state offices by petition under Article 10 of the Illinois Election Code. For the legislature imposed on those voters a rigid and arbitrary geographical requirement which bears no relation to any other provision of the Illinois Election Code and which could only have the result of making it extraordinarily difficult to form a new party and place a new party or independent candidates on the ballot.

Given the facts of population distribution in Illinois, it is clear that the obstacles imposed by the 1935 amendment achieve their effect by making it impossible for the voters of the more populous counties of the state (despite the fact that they comprise an overwhelming majority of the qualified voters of the state) to form a new party or to

nominate independent candidates by themselves. **In other words, the legislature, by the 1935 amendment, imposed a kind of second-class citizenship on millions of voters in the state solely becaue of their place of residence.** That second-class citizenship applies only to their right as voters to form new parties and to nominate new-party or independent candidates by petition. Their rights as votors to nominate candidates of the established parties are not similarly restricted.

Thus the discrimination inherent in the 1935 amendment is manifold in its effect. First of all, it discriminates against the voters of the more populous counties of the state and in favor of the voters of the less populous counties. Furthermore, it discriminates against voters who may wish to form a new party and to nominate new-party or independent candidates by petition by imposing an extremely difficult requirement as to geographical distribution, and in favor of voters in the established political parties as to whom no such geographical distribution of the vote is required.

The great growth in the population of Chicago and Cook County in recent decades has resulted in a maldistribution of political power in the state. A notable consequence of that maldistribution was the long fight over Congressional reapportionment in Illinois, a fight in which the case of *Colegrove v. Green, supra,* played a significant part. Although this situation has subsequently largely been remedied, there is still great inequity in the arrangement of legislative districts and Illinois Supreme Court districts in Illinois.

Legislative districts for the Illinois General Assembly have not been redistricted since 1901. Thus Cook County, with more than half the population of the state, has only

nineteen state Senators out of fifty-one, and only fifty-seven Representatives out of a total of one hundred and fifty-three. The Illinois Supreme Court districts have not been redistricted since the adoption of the 1870 Illinois Constitution. The result is that six of the seven judges are elected from down-state districts, containing altogether only about 40 per cent of the state's population. The remaining judge is elected in a district composed of Cook County and four other counties now containing about 60 per cent of the population. These facts were brought to the attention of this Court in *Colegrove* v. *Green*.

The 1935 amendment to Section 2 of Article 10 of the Illinois Election Code requiring for a valid nominating petition at least 200 signatures from each of at least 50 counties fits into this pattern of down-state control. The provision makes it impossible for the voters of Cook County to form a new party or nominate independent candidates. It makes it equally impossible for the voters of the predominantly urban areas of the state to form a new party or nominate independent candidates. For the voters of the smallest and primarily rural counties exercise an absolute veto.

In the face of these facts as to population distribution, **and it should be noted that in no other state in the union is there such a marked disparity between the population of the largest county and that of the other counties of the state**, and in the face of these political realities, the 1935 amendment is seen to be a most arbitrary and discriminatory enactment. For the reasons hereinafter stated, we submit that it violates provisions of the Constitutions of the United States and the State of Illinois.

III.

The 1935 amendment to Section 2 of Article 10 of the Illinois Election Code violates the equal protection of the laws clause of Amendment XIV to the United States Constitution.

Amendment XIV to the United States Constitution provides:

> "• • • nor shall any State • • • deny to any person within its jurisdiction the equal protection of the laws."

The equal protection clause is fully applicable to cases of discrimination against the exercise of political rights. *McPherson* v. *Blacker*, 146 U. S. 1, 23-24 (1892); *Nixon* v. *Herndon*, 273 U. S. 536 (1927); *Nixon* v. *Condon*, 286 U. S. 73 (1932); *Snowden* v. *Hughes*, 321 U. S. 1, 11 (1944).

The two "white primary" cases of *Nixon* v. *Herndon* and *Nixon* v. *Condon, supra,* stand for the proposition that discrimination against a group of citizens in their right to vote in a primary election constitutes denial of equal protection of the laws.

The discrimination resulting from the 1935 amendment to Section 2 of Article 10 of the Illinois Election Code, while not relating to the right to participate in a party primary, relates to the right to participate in an alternative method of nomination, which, like a primary, under the Illinois Election Code is an integral part of the entire election process.

Under the Illinois Election Code, *Ill. Rev. Stat., 1947, Chap. 46*, there are only three methods by which candidates for public office may be nominated: (1) by primary elections under Articles 7 and 8; (2) by convention under Articles 9 and 21; and (3) by nominating petition under Article

10. Established political parties as defined in the Illinois Election Code nominate their candidates for judicial offices and for presidential electors by the convention method under Articles 9 and 21 respectively. They nominate their candidates for other posts, federal, state, and local, by means of party primary elections under Articles 7 and 8.

Article 10 of the Illinois Election Code is the only set of provisions establishing machinery for the nomination of candidates by voters who are not members of established political parties. It permits the forming of new parties and the nomination of independent candidates by nominating petitions. For state-wide office, including United States Senator and Electors of President and Vice-President of the United States, the requirement both for new-party and independent nominations contained in Section 10 of the Illinois Election Code is 25,000 signatures of qualified voters, including at least 200 signatures from each of at least 50 counties. Apart from Article 10, there is no other possibility of nominating candidates open to independent voters or to voters who do not wish to participate in any of the legally established political parties.

Thus in Illinois the procedure of nominating by petition under Article 10 is every bit as much an integral part of the whole elective system as are the primary provisions set out in Articles 7 and 8.

The *Herndon* and *Condon* cases struck down state legislation which discriminated against citizens in the exercise of a political right on the grounds of race. The discrimination under the 1935 amendment to Section 2 of Article 10 of the Illinois Election Code is equally unconstitutional. It violates the equal protection clause of Amendment XIV in the following respects:

1. There is gross discrimination, on the basis of residence, against the vast majority of the citizens of

the State of Illinois, particularly those residing in populous areas. In particular there is discrimination against the citizens of Cook County, who comprise over half the total population of the state. Their voting strength, insofar as the nomination of candidates by petition under Article 10 is concerned, is hampered and even nullified by the absolute veto exercised by the 13 per cent of the registered voters of the state who reside in the 53 least populous counties of the state. The majority can elect but it cannot nominate!

2. There is gross discrimination against those independent voters who wish to avail themselves of their right to nominate candidates under Article 10 of the Illinois Election Code rather than to participate in the nominating processes at primary elections of the regularly established political parties. The vote of one who votes in a regular party primary counts equally with every other vote cast regardless of the voter's place of residence. But the effectiveness of the signature of an independent or new-party voter on a nominating petition under Article 10 of the Illinois Election Code is dependent on the geographical distribution of the signatures obtained.

3. There is gross discrimination against adherents of a new party and in favor of adherents of an already established party, inasmuch as the latter are guaranteed their place on the ballot, under Section 2 of Article 7 of the Illinois Election Code, if their vote at the preceding general election equaled five (5) per cent of the total vote cast, without regard to the geographical distribution of that vote. The new party adherents, on the other hand, can secure their right to a place on the ballot only by meeting the exacting geographical requirements imposed by the 1935 amendment to Section 2 of Article 10 of the Illinois Election Code.

The discrimination against new-party and independent candidacies effected by the 1935 amendment is purposeful, not accidental. As has already been pointed out, the 1935 amendment fits into the pattern of political control in the State of Illinois, a pattern which reveals a marked maldistribution of representation and voting power. The obvious

purpose and effect of the 1935 amendment is to deprive the voters of the most populous counties of the state of their right to independent political action and thereby to preserve the monopoly of the ballot held by the established political parties. The Appellants contend that they are being denied equal protection of the laws, just as the plaintiffs did in *Colegrove* v. *Green, supra*. And in this connection the following language of Mr. Justice Black, dissenting in that case (at page 569), is in point:

> "It is difficult for me to see why the 1901 State Apportionment Act does not deny appellants equal protection of the laws. * * * And such a gross inequality in the voting power of citizens irrefutably demonstrates a complete lack of effort to make an equitable apportionment. The 1901 State Apportionment Act if applied to the next election would thus result in a wholly indefensible discrimination against appellants and all other voters in heavily populated districts. The equal protection clause of the Fourteenth Amendment forbids such discrimination. It does not permit the States to pick out certain qualified citizens or groups of citizens and deny them the right to vote at all. See *Nixon* v. *Herndon*, 273 U. S. 536, 541; *Nixon* v. *Condon*, 286 U. S. 73. No one would deny that the equal protection clause would also prohibit a law that would expressly give certain citizens a half-vote and others a full vote. The probable effect of the 1901 State Apportionment Act in the coming election will be that certain citizens, and among them the appellants, will in some instances have votes only one-ninth as effective in choosing representatives to Congress as the votes of other citizens. Such discriminatory legislation seems to me exactly the kind that the equal protection clause was intended to prohibit."

IV.

The 1935 amendment to Section 2 of Article 10 of the Illinois Election Code violates the due process clause of Amendment XIV to the United States Constitution.

The Supreme Court of Illinois has said, in *Gillespie* v. *The People*, 188 Ill. 176, 182-83 (1900):

> "The terms, 'life', 'liberty' and 'property', are representative terms, and intended to cover every right, to which a member of the body politic is entitled under the law. These terms include the right of self-defense, freedom of speech, religious and political freedom, exemption from arbitrary arrest, the right freely to buy and sell as others may. Indeed, they may embrace all our liberties, personal, civil and political, including the rights to labor, to contract, to terminate contracts, and to acquire property. None of these liberties and rights can be taken away except by due process of law."

And Cooley, in his *Principles of Constitutional Law* (1880), in Chapter XIII entitled "Civil Rights and Their Guarantees" under Section IV entitled "The Guarantees of Life, Liberty, and Equality", has the following to say with regard to suffrage (at page 237):

> "*Suffrage.*—Participation in the suffrage is not of right, but it is granted by the State on a consideration of what is most for the interest of the State. Nevertheless, the grant makes it a legal right until it is recalled, and it is protected by the law as property is. * * *"

For the deprivation of the right to vote a person is entitled to damages. See *Wiley* v. *Sinkler*, 179 U. S. 58 (1900); *Swafford* v. *Templeton*, 185 U. S. 487 (1902); *Lane* v. *Wilson*, 307 U. S. 268 (1939).

But regardless of whether the right of suffrage is considered as an attribute of "liberty" or of "property", it

cannot be taken from a person without due process of law. Due process imports a standard of reasonableness. In any classification adopted by a legislature, the classes and categories must bear a reasonable relationship to the legitimate objectives of the legislature, and the classifications adopted must themselves be reasonable. For the many reasons set out in detail above, the Appellants submit that the 1935 amendment to Section 2 of Article 10 of the Illinois Election Code is manifestly arbitrary and unreasonable.

V.

The 1935 amendment to Section 2 of Article 10 of the Illinois Election Code violates Amendment XVII to the United States Constitution.

Amendment XVII provides for the popular election of United States Senators. To be sure, the qualifications for electors are determined by the individual states. But the clear and plain meaning of the amendment in requiring that Senators shall be "elected by the people" of each state is that they shall be elected by popular vote, that is, by a majority (or plurality) of the voters participating.

The nomination of candidates for the office of United States Senator must be in accordance with the same standards. This would certainly seem to be the plain requirement of *United States* v. *Classic*, 313 U. S. 299 (1941), where the nominating process is an integral part of the election procedure.

Under the Illinois Election Code, nomination by primary is by popular vote, with the candidate receiving the highest number of votes winning the nomination. There is no requirement as to geographical distribution of those votes. Yet with regard to the nomination of new-party candidates

or independent candidates for United States Senator under Article 10 of the Illinois Election Code there is a geographical distribution requirement; no one can be nominated by this process unless he receives, included in the minimum of 25,000 valid signatures, at least 200 signatures from each of at least 50 counties. He might secure 1,000,000 signatures on his nominating petition, but unless he had at least 200 from each of at least 50 counties, he would not be nominated. On the other hand a candidate with as few as 25,000 signatures, property distributed, would be nominated.

This is a clear violation of the requirement of Amendment XVII that Senators be elected by the people of the State. For as has already been emphasized, a majority of the registered voters of the State of Illinois residing in Cook County, and even the 87 per cent residing in the 49 most populous counties, cannot nominate a candidate for any state-wide office, including United States Senator, under Article 10 of the Illinois Election Code.

Let us assume that the Primary Law *(Article 7 of the Illinois Election Code)* were amended to provide that in the party primaries of the legally established political parties the candidate for any state-wide office, including United States Senator, who received the largest vote in the primary would be nominated, provided that he received at least 1,000 votes from each of 50 counties; and in the event that the candidate with the largest vote did not receive at least 1,000 votes from each of 50 counties, then the candidate with the next largest vote who did receive the required vote in each of 50 counties would be deemed nominated. Can there be any question that such a requirement would be unconstitutional under Amendment XVII? Certainly *United States* v. *Classic, supra,* and *Smith* v.

Allwright, 321 U. S. 649 (1944), would seem to permit other conclusion.

There should then be no doubt about the unconstitutio ality under Amendment XVII of the 1935 amendment Section 2 of Article 10 of the Illinois Election Code, sin nomination by petition under Article 10 is just as much integral part of the Illinois election machinery as nomin tion by primary under Article 7.

Since the 1935 amendment is unconstitutional insofar it relates to nominations for the office of United Stat Senator (for which office the Progressive Party sought nominate a candidate), and since the 1935 amendment co tains no separability clause, the amendment must fall wi regard to nominations for other political offices as wel *Myers* v. *Anderson*, 238 U. S. 368 (1915).

VI.

The 1935 amendment to Section 2 of Article 10 of the Illinoi Election Code violates the privileges and immunitie clause of Amendment XIV to the United States Con stitution.

1. The right to vote for federal officers is a right pro tected by the United States Constitution.

The well-known and often-cited case of *Ex parte Yar brough*, 110 U. S. 651 (1884), involved a petition for habea corpus by certain persons convicted of a conspiracy t intimidate a Negro from voting for a member of Congress The question arose as to the right of Congress to enact th legislation under which the indictments were made. Mr Justice Miller, speaking for a unanimous Court, wrote a pages 662-64:

> "This proposition answers also another objection to the constitutionality of the laws under consideration,

namely, that the right to vote for a member of Congress is not dependent upon the Constitution or laws of the United States, but is governed by the law of each State respectively. * * *

"Put it is not correct to say that the right to vote for a member of Congress does not depend on the Constitution of the United States.

"The office, if it be properly called an office, is created by that Constitution and by that alone. * * *

"The States in prescribing the qualifications of voters for the most numerous branch of their own legislatures, do not do this with reference to the election for members of Congress. Nor can they prescribe the qualification for voters for those *eo nomine*. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for members of Congress in that State. It adopts the qualification thus furnished as the qualification of its own electors for members of Congress.

"It is not true, therefore, that electors for members of Congress owe their right to vote to the State law in any sense which makes the exercise of the right to depend exclusively on the law of the State."

This view has been followed consistently by this Court in a long line of cases. Thus in *Wiley* v. *Sinkler*, 179 U. S. 58 (1900), the Court said, at page 62:

"The right to vote for members of the Congress of the United States is not derived merely from the constitution and laws of the State in which they are chosen, but has its foundation in the Constitution of the United States."

See further *United States* v. *Mosley*, 238 U. S. 383, 386 (1915); *Swafford* v. *Templeton*, 185 U. S. 487, 492-93 (1902); *United States* v. *Classic*, 313 U. S. 299, 314-15 (1941).

There is no question that the right to vote for United States Senators is protected along with the right to vote for members of the House of Representatives. Section 4

of Article I concerns Senators as well as Representatives, and Amendment XVII provides for the popular election of Senators. See *Chapman* v. *King*, 154 F. 2d 460 (C. C. A. 5th 1946), cert. den. 327 U. S. 800 (1946); *Smith* v. *Allwright*, 321 U. S. 649 (1944).

2. The right to nominate candidates for federal office, whether by primary or by petition, is a right protected by the United States Constitution.

The Illinois Supreme Court has recognized explicitly the role of the process of nomination in the whole elective process. In *People* v. *Election Commissioners*, 221 Ill. 9, 18 (1906), that Court stated unequivocally:

> "• • • The right to choose candidates for public offices whose names will be placed on the official ballot is as valuable as the right to vote for them after they are chosen, and is of precisely the same nature."

It is well settled that where a party primary is an integral part of the procedure of election, the right to vote in a primary is a right protected by the United States Constitution. This was the holding in *United States* v. *Classic*, 313 U. S. 299 (1941). At page 314 of the opinion Mr. Justice Stone wrote:

> "The right of qualified voters to vote at the Congressional primary in Louisiana and to have their ballots counted is thus the right to participate in that choice."

And at page 318 he said:

> "The right to participate in the choice of representatives for Congress includes; as we have said, the right to cast a ballot and to have it counted at the general election, whether for the successful candidate or not. **Where the state law has made the primary an integral part of the procedure of choice,** the right of the elector to have his ballot counted at the primary is likewise included in the right protected by Article I,

> § 2. And this right of participation is protected just as is the right to vote at the election, where the primary is by law made an integral part of the election machinery, whether the voter exercises his right in a party primary which invariably, sometimes or never determines the ultimate choice of the representative. • • •"
>
> (Emphasis added.)

In *Smith* v. *Allwright*, 321 U. S. 649 (1944), Mr. Justice Reed wrote at pages 661-62:

> "It may now be taken as a postulate that the right to vote in such a primary for the nomination of candidates without discrimination by the State, like the right to vote in a general election, is a right secured by the Constitution."

Here Mr. Justice Reed was referring to the type of primary which was found in the *Classic* case to prevail in Louisiana, namely, a primary election which is part of "a single instrumentality for choice of officers", the result being that the electoral process, composed of primary election and general election, has a "unitary character." The Court found that the same situation prevailed in Texas (at page 664):

> "When primaries become a part of the machinery for choosing officials, state and national, as they have here, the same tests to determine the character of discrimination or abridgement should be applied to the primary as are applied to the general election."

For the most recent holding on this point, see *Rice* v. *Elmore*, 165 F. 2d 387 (C. C. A. 4th 1947), cert. den. 68 S. Ct. 905 (1948).

Now, as we have shown above, it is clear from an examination of the Illinois Election Code that nomination by petition under Article 10 is an integral part of the election machinery. For those voters who consider themselves independent and do not wish to declare their party affilia-

tion by voting in a primary or who wish to endeavor to form a new political party, Article 10 is the only way they can nominate candidates and so participate in selecting the candidates who will appear on the general election ballot. See *United States* v. *Classic*, 313 U. S. 299, 312-13 (1941).

We submit that in Illinois the right to participate in an election for federal offices includes the right to nominate candidates for those offices by petition under Article 10 of the Illinois Election Code. That procedure is as integral a part of the election machinery as is the party primary. The right to nominate by petition is therefore a right secured by the United States Constitution.

3. The 1935 amendment to Section 2 of Article 10 of the Illinois Election Code violates the privileges and immunities clause of Amendment XIV to the United States Constitution.

Amendment XIV provides:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. * * *"

In *Twining* v. *New Jersey*, 211 U. S. 78, 97 (1908), this Court said:

> "Thus among the rights and privileges of National citizenship recognized by this court are the right to pass freely from State to State, *Crandall* v. *Nevada*, 6 Wall. 35; the right to petition Congress for a redress of grievances, *United States* v. *Cruikshank*, *supra*; the right to vote for National officers, *Ex parte Yarbrough*, 110 U. S. 651; *Wiley* v. *Sinkler*, 179 U. S. 58. * * *"

And see *Snowden* v. *Hughes*, 321 U. S. 1, 6-7 (1944); *Hague* v. *C. I. O.*, 307 U. S. 496, 512-513 (1939); *Edwards* v. *California*, 314 U. S. 160, 178 (1941).

Appellants therefore submit that their privilege as United States citizens to participate in the choice of candi-

dates and to vote for candidates for federal offices has been abridged by the State of Illinois. The details of the abridgement have already been presented, but essentially it amounts to this: **qualified voters have been deprived of the opportunity to nominate candidates by petition, for unless there is the geographical distribution required by the statute, even an absolute majority of the voters of the state cannot nominate by petition under Article 10 of the Illinois Election Code.**

For the reasons given, the 1935 amendment is unconstitutional insofar as it relates to the nomination of candidates for United States Senator. As stated in Point V above, therefore, it must fall as to all other offices as well.

VII.

The 1935 amendment to Section 2 of Article 10 of the Illinois Election Code violates Section 18 of Article II of the Illinois Constitution which provides that "All elections shall be free and equal."

It has already been shown that the 1935 amendment prevents the 87 per cent of the states' registered voters who reside in the 49 most populous counties from forming a new political party in the state and from nominating new-party or independent candidates for state office under Article 10 of the Illinois Election Code, while 25,000 of the remaining 13 per cent of the registered voters properly distributed among the 53 least populous counties could do so. That this provision of Section 2 of Article 10 of the Illinois Election Law is in violation of Section 18 of Article II of the Illinois Constitution is clear from the decisions of the Illinois Supreme Court.

In *People* v. *Election Commissioners,* 221 Ill. 9 (1906), the Illinois Supreme Court stated, at page 18, in language already quoted above:

> ". . . The right to choose candidates for public offices whose names will be placed on the official ballot is as valuable as the right to vote for them after they are chosen and is of precisely the same nature."

In that case the Illinois Court held the Primary Act of 1905 in violation of Section 18 of Article II of the Illinois Constitution, saying at page 16:

> "To protect and preserve that sovereignty the people registered their will that its exercise shall be absolutely free and **that the vote of very qualified elector shall be equal in its influence with that of every other one,** by Section 18 of the Bill of Rights, providing that all elections shall be free and equal." (Emphasis added.)

In *The People* v. *Fox,* 294 Ill. 263 (1920), the Illinois Supreme Court held the Primary Act of 1919 unconstitutional as contrary to Section 18 of Article II of the Illinois Constitution, saying at page 268:

> "Section 18 of the bill of rights provides that all elections shall be free and equal. This language has been construed by this court as meaning that the vote of every qualified elector shall be equal in its influence with every other one. * * * [Citing cases.] It is well settled in this state that the term 'election' applies to a primary for the nomination of candidates as well as to the election of such candidates to office, and the right to choose candidates for public office, whose names are to be placed on the official ballot, has been held as valuable as the right to vote for them after they are chosen and is of precisely the same nature."

In *McAlpine* v. *Dimock,* 326 Ill. 240 (1927), the Illinois Supreme Court once more held a Primary Act in violation of Section 18 of Article II of the Illinois Constitution—this time the Primary Act of 1910. The vice in the act was the

disproportionate voting power of precinct committeemen at county conventions.

As a result of the foregoing decisions, a new Primary Act was passed in 1927. This Act was upheld in *People* v. *Kramer*, 328 Ill. 512, 525 (1928), the court finding that the legislature had cured the defects in disproportionate voting power which made the earlier act unconstitutional in *McAlpine* v. *Dimock*.

The only possible conclusion from this series of cases is that the "free and equal" clause of the Illinois Constitution requires that each voter have approximately the same right to nominate candidates for office as every other voter. That this right is grossly violated by the 1935 Amendment to Section 2 of Article 10 of the Illinois Election Code is clear: the Amendment would permit 25,000 of the 13 per cent of the registered voters in Illinois to create a new political party and nominate new party or independent candidates while denying that right to 87 per cent of the state's registered voters who reside in the 49 most populous counties of the State.

For a decision from another jurisdiction holding unconstitutional a comparable requirement as to nomination by petition, see *State ex rel. Ragen* v. *Junkin*, 85 Neb. 1, 122 N. W. 473 (1909).

VIII.

Even if the constitutionality of the 1935 amendment to section 2 of Article 10 should be upheld, Section 4 of Article 10 of the Illinois Election Code should not be construed so as to bar the Progressive Party candidates for President and Vice-President of the United States from the ballots for the election to be held on November 2, 1948.

Section 4 of Article 10 of the Election Code provides:

> "Any person who has already voted at a primary election, held to nominate a candidate or candidates for any office or offices, to be voted upon at any certain election, shall not be qualified to sign a petition of nomination for a candidate or candidates for the same office or offices, to be voted upon at the same certain election."

The signers of a nominating petition for a certain office are not, therefore, disqualified by reason of their participation in the primary if the office specified in the petition is not one for which nominations were made at the primary.

Actually at the preceding primary election held on April 13, 1948, no candidates for the offices of Electors of President and Vice-President of the United States appeared on the ballot of either the Democratic or Republican parties. Nor was that primary election in any sense a primary election to nominate candidates for Electors of President and Vice-President of the United States, or for President and Vice-President of the United States, since all of such candidates are chosen by convention.

None of the signers of the Progressive Party nominating petition did vote or could have voted in the primary election for candidates for presidential electors. They were there-

fore not disqualified from signing a nominating petition for candidates for these offices, since these were not the same offices for which the primary was held, but different offices.

It follows that although the State Officers Electoral Board rightfully could have found that the signers of the nominating petition who had voted in the preceding primary election were thereby disqualified from signing a petition for offices voted on at that primary, i. e., United States Senator, Governor, and other state offices, the Board could not properly have held under Section 4 of Article 10 that voters who voted in the preceding primary election were disqualified from signing a nominating petition for offices not voted upon at that primary election, i. e., Electors of President and Vice-President of the United States.

This construction of the plain provisions of Section 4 of Article 10 is confirmed by Section 43 of Article 7 which disqualifies certain persons from voting in the primaries. That section reads as follows:

> "No person shall be entitled to vote at a primary . . .
>
> (b) who shall have signed a petition for nomination of a candidate of any party with which he does not affiliate, **when such candidate is to be voted for at the primary;**
>
> (c) who shall have signed the nominating papers of an independent candidate for any office **for which office candidates for nomination are to be voted for at such primary.** (Emphasis added.)

Taken with Section 4 of Article 10 this section establishes a statutory scheme by which a voter may both vote in the primary of an established political party and sign nominating petitions for candidates of another party for offices which are not voted for at that primary. If the voter should sign a nominating petition for the candidate of another party or for an independent candidate for an

office not be voted upon at the primary, **before the primary**, this section permits him to vote at the primary of his party for other offices. If the voter should already have voted in a party primary, he may, under Section 4 of Article 10, **subsequent to the primary**, sign a nominating petition for a candidate of another party or for an independent candidate, so long as it is a candidate for an office not voted for at that primary.

This is the clear meaning of the statute.

The complaint alleges (par. 48) that had the signatures of signers who voted in the preceding primary election been counted, there would have been more than 200 signatures from each of 50 counties.

Since signatures of voters who voted in the preceding primary election are valid with respect to the nomination of candidates for the offices of Electors of President and Vice-President of the United States, their signatures should have been counted and the petition held valid as to these offices. The ruling of the State Officers Electoral Board to the contrary was therefore improper.

It is apparent, therefore, that the Progressive Party petition contained a sufficient number of valid signatures to satisfy even the exacting requirements of the 1935 Amendment for the nomination of presidential electors. We submit, irrespective of the disposition of the constitutional issues, that this Court should direct that the candidates of the Progressive Party for President and Vice-President be placed on the ballot.

IX.

Appellants waived none of their constitutional rights by not asserting them before the State Officers Electoral Board.

The State Officers Electoral Board is not a judicial or quasi-judicial body. It has extremely limited functions, which are specified in Section 10 of Article 10 of the Illinois Election Code. Essentially its job is one of fact-finding. It clearly does not have power to consider or pass upon the constitutional questions raised in the district court and now before this Court.* Under Illinois law it is well established that constitutional rights not raised before such a body are not waived. *Welton* v. *Hamilton*, 344 Ill. 84 (1931).

Moreover, three of the Appellants here were not parties to the proceedings before the State Officers Electoral Board, Appellants Garfield and Andich, who signed the Progressive Party nominating petition, and Appellant Holtzman, who did not sign because he was not of voting age until September 24, 1948. They are before the Court to protect their constitutional rights as citizens and qualified voters and are not bound by any of the proceedings before the State Officers Electoral Board.

*The Appellees County Clerk of Cook County, City Clerk of the City of Chicago, and Board of Election Commissioners of the City of Chicago in their Brief in the district court admitted as much: "The decision of the Electoral Board was not rendered on any constitutional issue or question. Obviously it had no authority so to do, even if such issues had been presented to it. The Board could only read and apply the appropriate provisions of the Election Code, and this it did."

X.

This Court can enter an effective order granting the relief requested by appellants.

If this Court declares the 1935 Amendment to Section 2 of Article 10 of the Illinois Election Code unconstitutional, the legislation in its original form would remain intact. The invalidation of the amendment would not nullify the whole statute. *People* v. *Alterie,* 356 Ill. 307 (1934). It is conceded that the Progressive Party petition complies fully with all the requirements of Section 2 of Article 10, as in force prior to the 1935 amendment.

The substance of the relief here requested is an order requiring the various Illinois election officials to place the Progressive Party candidates on the official ballots for use throughout the State of Illinois at the November 2, 1948 general election. Although this case comes to this Court only two weeks before the election, Appellants brought it here at the earliest possible moment. The Progressive Party nominating petition was filed during the one week period authorized for filing, 78 to 85 days prior to election. *(Section 6 of Article 10, Illinois Election Code.)* As their Jurisdictional Statement shows, Appellants throughout have been diligent in seeking a remedy. At this date the relief sought is still practicable.

A prompt decision here will afford the election officials time to print new ballots or to re-run the ballots previously printed so as to imprint upon them the names of Progressive Party candidates. In the alternative, there is available the method of affixing pasters to the ballots, a method specifically authorized by Section 13 of Article 10 of the Illinois Election Code in the event of vacancies in nominations.

In Cook County a re-run would be relatively simple in view of the fact that there is already a Progressive Party column on the ballots for the Progressive Party county and city candidates, with a blank space in place of the names of Presidential, Vice-Presidential, Senatorial, and state candidates. *(See the photostatic copy of a Cook County ballot appended as Exhibit I.)* In any event a paster could easily be prepared which would fit this blank space, *(See the sample paster appended as Exhibit II.)* In the other counties, a paster could be prepared and affixed to the right-hand edge of the regular ballots, thus adding an extra column with the names of Progressive Party candidates thereon. *(See the photostatic copy of a Peoria ballot appended as Exhibit III.)*

In some areas, and in approximately one out of every ten Cook County precincts, voting machines will be used. Adding the names of candidates to the machines is a simple matter.

Thus the difficult practical and political questions which gave concern to the majority of the Court in *Colegrove* v. *Green,* 328 U. S. 549 (1946), are not present here.

In that case a majority of the members then sitting held that the Court had jurisdiction to grant the relief requested. Mr. Justice Rutledge, however, felt that the Court should decline to exercise its jurisdiction for the reason, in his words (at page 566), that "the cure sought may be worse than the disease." When Mr. Justice Frankfurter, at page 552, wrote that the relief requested was beyond the competence of the Court to grant, he had in mind more than technical questions of jurisdiction. Indeed he said, "This is one of those demands on judicial power which cannot be met by verbal fencing about 'jurisdiction'." By emphasizing the fact that no court could affirmatively remap the Illinois congressional districts, he appears to have been

concerned with the practical problems of government and the relationships of its various branches. He also feared that judicial action, by causing all Congressional elections in Illinois to be held at large, might produce consequences even worse than those arising from unequal districts. And this, it is significant, was the possibility which worried Mr. Justice Rutledge.

Since none of these delicate problems are involved here, the *Colegrove* case stands as an authorty for the assumption of jurisdiction and the granting of relief in these proceedings. Cf. *Rice* v. *Elmore*, 165 F. 2d 387 (C. C. A. 4th 1947), cert. den. 68 S. Ct. 905 (1948).

Conclusion.

For all of the reasons argued above, the Appellants respectfully submit that the order of the District Court denying an interlocutory injunction and dismissing the complaint should be reversed, and the cause remanded with directions to reinstate the complaint and issue an interlocutory injunction as prayed for in the complaint.

Respectfully submitted,

JOHN J. ABT,
H. B. RITMAN,
EARL B. DICKERSON,
RICHARD F. WATT,
EDMUND HATFIELD,
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Of Counsel.

APPENDIX A.

DISTRICT COURT OF THE UNITED STATES,
For the Northern District of Illinois,
Eastern Division.

Curtis D. MacDougall, et al., *Plaintiffs*, *vs.* Dwight H. Green, Individually and as Governor of the State of Illinois, *et al.*, *Defendants.*	No. 48 C 1406

Findings of Fact and Conclusions of Law.

This cause coming on to be heard on the Plaintiffs' verified complaint as amended and motion for an interlocutory injunction and the Court, having heard argument of counsel and having considered the briefs of the parties and of *amicus curiae* and being fully advised in the premises, does make and adopt the following findings of fact and conclusions of law:

Findings of Fact.

1. This is an action of a civil nature brought under §2201 of the Declaratory Judgment Act, 28, c. 151, United States Code, effective September 1, 1948.

2. The individual defendants are citizens and residents of the State of Illinois; they claim to be candidates of a new political party known as "The Progressive Party" for United States Senator from the State of Illinois and

for certain public offices of the State of Illinois; they seek the entry of an interlocutory injunction that the defendants Dwight H. Green, Arthur C. Lueder and Edward J. Barrett, Governor, Auditor of Public Accounts, and Secretary of the State of Illinois, respectively, be directed to certify to the respective county clerks of the State of Illinois, as the candidates of the Progressive Party, the names of the persons named in the complaint.

3. That on August 16, 1948 a declaration of intention to form a new State-wide political party and a petition to nominate candidates for that party was filed by and on behalf of The Progressive Party pursuant to the provisions of Article 10 of the Illinois Election Code; said nominating petition, together with the statements of candidacy of the individual candidates, was presented to the Governor, the Auditor of Public Accounts, and the Secretary of State of the State of Illinois for endorsement and filed in the office of the Secretary of State as required by law; that on August 21, 1948 certain legal voters of the State of Illinois filed objections to said nominating petition and thereafter on August 26, 1948 the State Officers' Electoral Board, the body provided for by law to hear and pass upon objections to nominating petitions filed pursuant to Article 10 of the Illinois Election Code, convened in the Capitol Building in Springfield, Ill. The objectors and the Progressive Party and the members thereof appeared before the Board. No objection was made to the qualifications of the members thereof or that the Electoral Board did not have jurisdiction of the parties, of the proceedings, and of the subject matter.

4. Said Board received evidence and heard arguments on behalf of the parties interested from August 26, 1948 to August 31, 1948, and on August 31 found as a fact "That the nominating petition filed on behalf of the said candi-

dates of The Progressive Party does not include the signatures of 200 qualified voters from each of at least 50 counties within this State as required by statute for the nomination of said candidates for such public office, and is therefore insufficient in law as a nominating petition," and that the purported petition was not sufficient in law to entitle the said candidates' names to appear on the ballot for use at November 2, 1948 general election.

Conclusions of Law.

1. The provisions of § 2 of Article 10 (10-2, c. 46, Ill. Rev. Stat. 1947), requiring for a valid nominating petition at least two hundred signatures of qualified voters from each of at least fifty counties is not repugnant to, nor in violation of any provision of the Constitution of the United States, nor does it contravene § 18 Article II of the Constitution of Illinois.

2. This court is without jurisdiction to examine or inquire into the decision of the Illinois State Officers' Electoral Board of August 31, 1948 and to hold that the Board's decision is null and void.

3. The motion for the interlocutory injunction will be denied.

(Signed) OTTO KERNER,
Judge U. S. Court of Appeal.

(Signed) PHILIP L. SULLIVAN,
Judge U. S. District Court.

(Signed) M. L. IGOE,
Judge U. S. District Court.

APPENDIX B.

TABLE I.

DISTRIBUTION OF POPULATION AND REGISTERED VOTERS IN STATE OF ILLINOIS.

	Population*	%	Registered Voters #	%
Cook County	4,063,342	51.4	2,557,560	52.6
5 most populous counties	4,663,170	59.0	2,873,056	59.4
10 most populous counties	5,250,796	66.5	3,225,984	66.3
25 most populous counties	6,248,271	76.5	3,822,973	78.6
49 most populous counties	7,079,663	89.6	4,292,565	87.2
41 counties conceded by objectors	6,381,427	80.8	3,880,237	79.6
Totals—State of Illinois (102 counties)	7,895,644	100.0	4,860,362	100.0

* Population figures from 1940 census.
\# Registration figures from best available 1948 estimates.

TABLE II.

FORTY-NINE MOST POPULOUS COUNTIES IN ILLINOIS.

No.	County	Population	Cumulative Totals	Registered Voters	Cumulative Totals
1	Cook	4,063,342		2,557,560	
2	St. Clair	166,899		60,577	
3	Peoria	153,374		83,023	
4	Madison	149,349		91,893	
5	Kane	130,206		80,000	
			4,663,170		2,873,056
6	Winnebago	121,178		65,830	
7	Lake	121,094		62,896	
8	Sangamon	117,912		80,000	
9	Will	114,210		73,202	
10	Rock Island	113,232		71,000	
			5,250,796		3,225,984
11	DuPage	103,480		69,608	
12	LaSalle	97,801		70,000	
13	Vermilion	86,791		46,896	
14	Macon	84,693		55,000	
15	McLean	73,930		37,148	
16	Champaign	70,578		40,000	
17	Adams	65,229		31,500	

No.	County	Population	Cumulative Totals	Registered Voters	Cumulative Totals
18	Kankakee	60,877		39,000	
19	Tazewell	58,362		34,353	
20	Franklin	53,137		33,817	
21	Knox	52,250		31,300	
22	Williamson	51,427		26,000	
23	Marion	47,989		20,000	
24	Macoupin	46,304		30,367	
25	Fulton	44,627		27,000	
			6,248,271		3,822,973
26	Henry	43,798		27,000	
27	Whiteside	43,338		23,500	
28	Stephenson	40,646		20,000	
29	Livingston	38,838		21,300	
30	Christian	38,564		20,500	
31	Coles	38,470		22,100	
32	Saline	38,066		19,000	
33	Jackson	37,920		19,000	
34	Bureau	37,600		24,000	
35	McHenry	37,311		24,556	
36	Morgan	36,378		20,581	
37	Lee	34,604		18,067	
38	Montgomery	34,499		24,000	
39	DeKalb	34,388		22,239	
40	Jefferson	34,375		20,996	
41	Randolph	33,608		17,781	
42	Iroquois	32,496		19,000	
43	Ogle	29,869		18,000	
44	Logan	29,438		17,870	
45	Hancock	29,297		16,500	
46	Fayette	29,159		15,065	
47	McDonough	26,944		13,500	
48	Shelby	26,290		17,037	
49	Alexander	25,496		13,000	
			7,079,663		4,292,565

TABLE III.

COUNTIES IN WHICH AT LEAST 200 QUALIFIED VOTERS SIGNED PETITIONS, AS CONCEDED BY OBJECTORS.

County	Approximate Number of Signatures Conceded	Population	Registered Voters
*Alexander	(298)	25,496	13,000
Boone	(226)	15,202	9,786
*Champaign	(400)	70,578	40,000
Clinton	(203)	22,912	12,143
*Coles	(245)	38,470	22,100
*Cook	(27,010)	4,063,342	2,557,560
*DuPage	(320)	103,430	69,608
Edgar	(222)	24,430	14,780
*Franklin	(226)	53,137	33,817
Grundy	(275)	18,398	11,000
*Henry	(263)	43,798	27,000
*Jackson	(294)	37,920	19,000
*Jefferson	(315)	34,375	20,996
*Kane	(422)	130,206	80,000
*Knox	(202)	52,250	31,300
*Lake	(588)	121,094	62,896
Lawrence	(252)	21,075	9,976
*Macon	(414)	84,693	55,000
*Macoupin	(314)	46,304	30,367
*Madison	(446)	149,349	91,896
*Marion	(458)	47,989	20,000
*McHenry	(248)	37,311	24,556
Monroe	(211)	12,754	6,248
*Montgomery	(282)	34,499	24,000
*Peoria	(649)	153,374	83,023
Pulaski	(251)	15,875	8,200
*Randolph	(345)	33,608	17,781
Richland	(271)	17,137	9,749
*Sangamon	(384)	117,912	80,000
*St. Clair	(881)	166,899	60,577
*Stephenson	(350)	40,646	26,000
*Tazewell	(216)	58,362	34,353
*Vermilion	(201)	86,791	46,896
Wabash	(206)	13,724	9,073
Wayne	(229)	22,092	12,349
Washington	(217)	15,801	10,175
White	(208)	20,027	12,500
*Will	(243)	114,210	73,202
*Whiteside	(288)	43,338	23,500
*Winnebago	(236)	121,178	65,830
*Williamson	(287)	51,427	26,000
	(39,105)	6,381,427	3,880,237

*Indicates county is among forty-nine most populous counties of State of Illinois.

OFFICIAL CANDIDA CANDIDATE BALLOT

DEMOCRATIC

FOR PRESIDENT OF THE UNITED STATES
HARRY S. TRUMAN

FOR VICE-PRESIDENT OF THE UNITED STATES
ALBEN W. BARKLEY

FOR UNITED STATES SENATOR
PAUL H. DOUGLAS

FOR GOVERNOR
ADLAI E. STEVENSON

FOR LIEUTENANT GOVERNOR
SHERWOOD DIXON

FOR SECRETARY OF STATE
EDWARD J. BARRETT

FOR AUDITOR OF PUBLIC ACCOUNTS
BENJAMIN O. COOPER

FOR STATE TREASURER
ORA SMITH

FOR ATTORNEY GENERAL
IVAN A. ELLIOTT

FOR TRUSTEES OF THE UNIVERSITY OF ILLINOIS
(Three to be Elected)
FRANCES BEST WATKINS
GEORGE WIRT HERRICK
ROBERT Z. HICKMAN

FOR REPRESENTATIVE IN CONGRESS
1st Congressional District
WILLIAM L. DAWSON

REPUBLICAN

FOR PRESIDENT OF THE UNITED STATES
THOMAS E. DEWEY

FOR VICE-PRESIDENT OF THE UNITED STATES
EARL WARREN

FOR UNITED STATES SENATOR
C. WAYLAND BROOKS

FOR GOVERNOR
DWIGHT H. GREEN

FOR LIEUTENANT GOVERNOR
RICHARD YATES ROWE

FOR SECRETARY OF STATE
WILLIAM G. STRATTON

FOR AUDITOR OF PUBLIC ACCOUNTS
SIMON A. MURRAY

FOR STATE TREASURER
ELMER H. DROSTE

FOR ATTORNEY GENERAL
GEORGE F. BARRETT

FOR TRUSTEES OF THE UNIVERSITY OF ILLINOIS
(Three to be Elected)
CHESTER R. DAVIS
CHARLES L. ENGSTROM
DR. W. L. CRAWFORD

FOR REPRESENTATIVE IN CONGRESS
1st Congressional District
WILLIAM E. KING

PROHIBITION

FOR PRESIDENT OF THE UNITED STATES
CLAUDE A. WATSON

FOR VICE-PRESIDENT OF THE UNITED STATES
DALE H. LEARN

FOR UNITED STATES SENATOR
ENOCH A. HOLTWICK

FOR GOVERNOR
WILLIS RAY WILSON

FOR LIEUTENANT GOVERNOR
R. B. CAMPBELL

FOR SECRETARY OF STATE
MAUDE SWITS STOWELL

FOR AUDITOR OF PUBLIC ACCOUNTS
IRVING B. GILBERT

FOR STATE TREASURER
RUPERT J. JORDAN

FOR ATTORNEY GENERAL
FREDERICK JUCHHOFF

FOR TRUSTEES OF THE UNIVERSITY OF ILLINOIS
(Three to be Elected)
E. N. HIMMEL
REGINA ETHEL RUYLE
ROSS E. PRICE

SOCIALIST

FOR PRESIDENT OF THE UNITED STATES
NORMAN THOMAS

FOR VICE-PRESIDENT OF THE UNITED STATES
TUCKER P. SMITH

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SOCIALIST

FOR PRESIDENT OF THE UNITED STATES
NORMAN THOMAS

FOR VICE-PRESIDENT OF THE UNITED STATES
TUCKER P. SMITH

PROGRESSIVE

FOR REPRESENTATIVE IN CONGRESS
1st Congressional District
EARL B. DICKERSON

SOCIALIST LABOR

FOR PRESIDENT OF THE UNITED STATES
EDWARD A. TEICHERT

FOR VICE-PRESIDENT OF THE UNITED STATES
STEPHEN EMERY

FOR UNITED STATES SENATOR
FRANK SCHNUR

FOR GOVERNOR
LOUIS FISHER

FOR LIEUTENANT GOVERNOR
O. ALFRED OLSON

FOR SECRETARY OF STATE
GREGORY LYNGAS

FOR AUDITOR OF PUBLIC ACCOUNTS
NICK MAYS

FOR STATE TREASURER
RUDOLPH KOSIC

FOR ATTORNEY GENERAL
EDWARD C. GROSS

FOR TRUSTEES OF THE UNIVERSITY OF ILLINOIS
(Three to be Elected)
LOREN M. JOHNSON
HENRY CORETZ
BERNARD CAMPBELL

INDEPENDENT

EXHIBIT 2.
Sample paster for Cook County ballot.

FOR PRESIDENT OF THE UNITED STATES
HENRY A. WALLACE

FOR VICE-PRESIDENT OF THE UNITED STATES
GLEN H. TAYLOR

FOR UNITED STATES SENATOR
CURTIS D. MacDOUGALL

FOR GOVERNOR
GRANT OAKES

FOR LIEUTENANT GOVERNOR
HARRY L. DIEHL

FOR SECRETARY OF STATE
PAULINE KIGH REED

FOR AUDITOR OF PUBLIC ACCOUNTS
BERNARD J. McDONOUGH

FOR STATE TREASURER
FRED J. NEBGEN

FOR ATTORNEY GENERAL
DONALD L. HESSON

FOR TRUSTEES OF THE UNIVERSITY OF ILLINOIS
(Three to be Elected)
ANITA McCORMICK BLAINE
RONALD V. CASSILL
WILFRED WAKEFIELD

SPECIMEN BALLOT

General (Presidential) Election, Tuesday, November 2, 1948, City of Peoria, County of Peoria, State of Illinois

REPUBLICAN PARTY

For President of the United States:
THOMAS E. DEWEY
New York City, New York.

For Vice-President of the United States:
EARL WARREN
Oakland, California.

For United States Senator:
C. WAYLAND BROOKS
1637 W. Howard St., Chicago.

For Governor:
DWIGHT H. GREEN
5349 N. Sheridan Rd., Chicago.

For Lieutenant Governor:
RICHARD YATES ROWE
Jacksonville.

For Secretary of State:
WILLIAM G. STRATTON
Morris.

For Auditor of Public Accounts:
SINON A. MURRAY
5636 W. Cermak Rd., Chicago.

For State Treasurer:
ELMER H. DROSTE
Mount Olive.

For Attorney General:
GEORGE F. BARRETT
1530 N. State Parkway, Chicago.

For Trustees of the University of Illinois:
(Vote for Three)
CHESTER R. DAVIS
Wayne.
CHARLES L. ENGSTROM
Peoria.
DR. W. L. CRAWFORD
Rockford.

For Representative in Congress:
Eighteenth District.
HAROLD H. VELDE
Pekin.

For Members of the General Assembly:
Eighteenth District.
For State Senator:
CLYDE C. TRAGER
Peoria.

For Representatives:
Eighteenth District.
(Vote for One, Two or Three)
ROBERT L. BURHANS
Peoria.
AUGUST C. (GUS) GREBE
Peoria.

For County Auditor:
VINCENT P. SWEENEY
908 Fifth Avenue, Peoria.

For Clerk of the Circuit Court:
EDWARD J. KEELEY
134 So. Eleanor Place, Peoria.

For Recorder of Deeds:
ALBERT HARMS
604 W. Richwoods, Peoria.

For Coroner:
CHAUNCEY E. WOOD
2322 So. Adams Street, Peoria.

For States Attorney:
EDWARD T. O'CONNOR
301 Columbia Terrace, Peoria.

DEMOCRATIC PARTY

For President of the United States:
HARRY S. TRUMAN
Independence, Missouri.

For Vice-President of the United States:
ALBEN W. BARKLEY
Paducah, Kentucky.

For United States Senator:
PAUL H. DOUGLAS
5658 S. Blackstone Ave., Chicago.

For Governor:
ADLAI E. STEVENSON
Libertyville.

For Lieutenant Governor:
SHERWOOD DIXON
Dixon.

For Secretary of State:
EDWARD J. BARRETT
Wilmette.

For Auditor of Public Accounts:
BENJAMIN O. COOPER
East St. Louis.

For State Treasurer:
ORA SMITH
Biggsville.

For Attorney General:
IVAN A. ELLIOTT
Carmi.

For Trustees of the University of Illinois:
(Vote for Three)
FRANCES BEST WATKINS
5831 Blackstone Ave., Chicago.
GEORGE WIRT HERRICK
Clinton.
ROBERT Z. HICKMAN
Danville.

For Representative in Congress:
Eighteenth District.
DALE E. SUTTON
Pekin.

For Members of the General Assembly:
Eighteenth District.
For State Senator:
STANLEY W. CRUTCHER
Peoria.

For Representatives:
Eighteenth District.
(Vote for One, Two or Three)
JAMES D. CARRIGAN
Peoria.

For County Auditor:
RALPH VAN NORMAN
1901 No. Jefferson Street, Peoria.

For Clerk of the Circuit Court:
ROBERT E. DINSMORE
511 E. Virginia Avenue, Peoria.

For Recorder of Deeds:
CHESTER D. BROWN
817 Starr Street, Peoria.

For Coroner:
DR. HAROLD F. DILLER
115 Pennsylvania Avenue, Peoria.

For States Attorney:
MICHAEL A. SHORE
204 N. University Street, Peoria.

PROHIBITION PARTY

For President of the United States:
CLAUDE A. WATSON
Los Angeles, California.

For Vice-President of the United States:
DALE H. LEARN
East Stroudsburg, Pennsylvania.

For United States Senator:
ENOCH A. HOLTWICK
Greenville.

For Governor:
WILLIS RAY WILSON
1851 W. 22nd Pl., Chicago.

For Lieutenant Governor:
R. B. CAMPBELL
Greenville.

For Secretary of State:
MAUDE SWITS STOWELL
Rockford.

For Auditor of Public Accounts:
IRVING B. GILBERT
Moline.

For State Treasurer:
RUPERT J. JORDAN
Sycamore.

For Attorney General:
FREDERICK JUCHHOFF
1511 E. 60th St., Chicago.

For Trustees of the University of Illinois:
(Vote for Three)
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Naperville.
REGINA ETHEL RUYLE
Waukegan.
ROSS E. PRICE
Bourbonnais.

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SOCIALIST PARTY

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NORMAN THOMAS

For Vice-President of the United States:
TUCKER P. SMITH

SOCIALIST LABOR PARTY

For President of the United States:
EDWARD A. TEICHERT
Greensburg, Pennsylvania.

For Vice-President of the United States:
STEPHEN EMERY
Jamaica, New York.

For United States Senator:
FRANK SCHNUR
3805 Ellis Ave., Chicago.

For Governor:
LOUIS FISHER
5208½ Sunnyside Ave., Chicago.

For Lieutenant Governor:
O. ALFRED OLSON
Rockford.

For Secretary of State:
GREGORY LYNGAS
1540 Wayeland, Chicago.

For Auditor of Public Accounts:
NICK MAYS
717 S. Halsted St., Chicago.

For State Treasurer:
RUDOLPH KOSIC
9934 Avenue J, Chicago.

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EDWARD C. GROSS
746 Brompton Pl., Chicago.

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BERNARD CAMPBELL
900 Montrose Ave., Chicago.

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